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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re SOPHIA B., a Person Coming Under the
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

JESSICA B.,

Defendant and Appellant.

F078430

(Super. Ct. No. JD138117-00)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Lorna H.
Brumfield, Judge.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Franson, J. and DeSantos, J.

This dependency appeal concerns now 17-month-old Sophia B. In September 2018, the juvenile court terminated the parental rights of her mother, Jessica B. (mother), and father, J.M. (Welf. & Inst. Code, § 366.26.)¹ At the same hearing, the court denied mother’s modification petition (§ 388), requesting placement or reunification services. After reviewing the juvenile court record, mother’s court-appointed attorney informed this court she could find no arguable issues to raise on mother’s behalf. This court granted mother leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844 (*Phoenix H.*).)²

Mother submitted a letter in which she contends the juvenile court failed to consider evidence favorable to her when it terminated her parental rights; namely, that she enrolled in services on her own and shared a parent-child bond with Sophia and her visits with Sophia were of good quality. She also contends her trial attorney had a conflict of interest and did not advocate for her.

We conclude mother failed to set forth a good cause showing that an arguable issue of reversible error arose from the September 2018 hearing. (*Phoenix H.*, *supra*, 47 Cal.4th at p. 844.) Consequently, we dismiss the appeal.

PROCEDURAL AND FACTUAL SUMMARY

In December 2017, the Kern County Department of Human Services (department) was notified that mother gave birth to a baby girl and both tested positive for amphetamine. Mother had a history of methamphetamine use and child welfare intervention. Four of her older children were not in her custody because of her drug use.

¹ All statutory references are to the Welfare and Institutions Code.

² J.M. also appealed from the termination order and his court-appointed attorney filed a “no issues” letter pursuant to *Phoenix H.* We dismissed his appeal after he failed to file a letter brief.

The oldest child lived out of state with the child's father. The other three children had been adopted by their maternal aunt. Mother admitted using methamphetamine the day before the delivery. She identified J.M. as a possible father for Sophia.

The department filed a dependency petition on Sophia's behalf, alleging she was a minor described under section 300, subdivision (b) because mother exposed her to methamphetamine throughout the pregnancy and did not have the necessary supplies to care for her. The petition further alleged under subdivision (j) (abuse of sibling) that Sophia's half siblings were placed in protective custody in December 2010 because of mother's substance abuse. In July 2011, at a contested jurisdictional hearing, the court denied mother reunification services and the children were freed for adoption in August 2012.

The juvenile court ordered Sophia detained and ordered the department to arrange weekly supervised visits. A social worker met with mother after the hearing and reviewed a voluntary case plan with her, recommending she attend parenting and substance abuse classes. The department placed Sophia with her half siblings in the home of her maternal aunt.

In March 2018, mother waived her right to a jurisdictional trial on the allegations and submitted the matter on the evidence. The court adjudged Sophia a dependent child as alleged and set the matter for disposition.

In its report for the dispositional hearing, the department recommended the juvenile court deny mother reunification services under section 361.5, subdivision (b)(11) because of her failure to treat her drug problem following the termination of her parental rights to Sophia's half siblings. Although she was participating in services, including voluntary drug testing, and regularly visited Sophia, she made minimal progress. She tested negative for drugs four times, failed to test once and tested positive for methamphetamine twice, once in December 2017 and once in January 2018. She was also denied family reunification services in a prior case because she was incarcerated for

drug-related offenses. She was currently involved in criminal proceedings for possession of a controlled substance while armed with a loaded firearm, possession of a controlled substance for sale and possession of a firearm by a felon.

In a supplemental report filed on the day of the dispositional hearing, the department informed the juvenile court that mother attempted to drug test on April 2, 2018, and was caught wearing a tube around her stomach. The test collector reported it to the department the following day. On April 4, mother went to the testing facility demanding the name of the test collector who reported her. The staff at the facility informed her they would refuse to test her if she continued to be rude and confrontational.

The juvenile court conducted the dispositional hearing in April 2018, removed Sophia from mother's custody, denied her reunification services as recommended and set a section 366.26 hearing for August 2018. The court also declared J.M. to be Sophia's biological father and denied him reunification services because it would not benefit Sophia. (§ 361.5, subd. (a).) Neither parent challenged the court's setting order by filing an extraordinary writ petition. (Cal. Rules of Court, rule 8.450.)

The section 366.26 hearing was continued to September 26, 2018. Prior to the hearing, mother's attorney filed a section 388 petition asking the juvenile court to provide her reunification services, place Sophia in her custody with family maintenance services or return Sophia to her custody and dismiss the case. As changed circumstances, her attorney declared that she would complete parenting classes and substance abuse treatment by the hearing and had been drug testing at her own expense. She attended every visit offered and the visits were of excellent quality. Her attorney also asserted that allowing Sophia to return to mother's custody would allow her to deepen the bond they developed through visitation and have contact with her half siblings. The court ordered a hearing on mother's section 388 petition to be conducted in conjunction with the section 366.26 hearing.

The department objected to mother's petition and reported that on September 13, 2018, there was a probation and police raid at mother's apartment, during which some people were arrested for violating terms of their probation and being under the influence. Mother was arrested for obstructing a peace officer. The drug testing facility also reported that mother failed to test on August 30, 2018, provided an invalid sample the next day and an insufficient specimen on September 10, 2018.

In its report for the section 366.26 hearing, the department recommended the juvenile court terminate parental rights and free Sophia to be adopted by her maternal aunt.

Mother appeared at the section 366.26 hearing on September 26, 2018, with her attorney. Mother's attorney made an offer of proof that mother did not believe she missed as many drugs tests as the department identified in its report. The offer of proof was accepted. Her attorney argued that she was highly involved in her substance abuse class and regularly attended her group sessions. She was scheduled to complete her classes within the next month. He pointed out that mother was attentive and appropriate during visits and Sophia was bonded to her.

The juvenile court denied mother's section 388 petition. It acknowledged the quality of her visits was good but stated there were issues with the drug tests she submitted recently. It also stated the incident at her apartment on September 13 showed she could not extricate herself from a lifestyle of drugs. The court noted that she was hanging around with known methamphetamine users who were on probation. The court stated she had an addiction she had not been able to shake and the court could not put Sophia in that situation.

The juvenile court also followed the department's recommendation to terminate parental rights. The court found by clear and convincing evidence that Sophia was likely to be adopted and that none of the exceptions to adoption applied.

DISCUSSION

At a termination hearing, the juvenile court's focus is on whether it is likely the child will be adopted and if so, to order termination of parental rights. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If, as in this case, the child is likely to be adopted, the juvenile court must terminate parental rights unless the parent proves there is a compelling reason for finding that termination would be detrimental to the child under any of the circumstances listed in section 366.26, subdivision (c)(1)(B) (exceptions to adoption).

Mother does not challenge the sufficiency of the evidence supporting the juvenile court's finding Sophia is likely to be adopted. Instead, she asserts there was evidence the court should have more heavily weighed in deciding whether to terminate her parental rights; evidence that supported application of the parent-child beneficial relationship exception. Specifically, she points to evidence that she participated in parenting and substance abuse classes and submitted to random drug testing, even though it was not court-ordered. She also points to the court's acknowledgement that she loves Sophia, the quality of their visitation was good and that "a strong bond does exist."

The beneficial parent-child relationship exception to termination of parental rights applies if termination would be detrimental to the child because the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A parent asserting this exception must show he or she "occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent." (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

In terminating mother's parental rights, the juvenile court considered the evidence she claims it overlooked. However, it could not find sufficient evidence to support the exception, stating "I have no doubt, ma'am, that you love your child very much and that you're very bonded to her, but I don't have enough evidence to support the parent/child exception here with this young infant." To make a good cause showing an arguable issue

exists on this record, mother would have to point to evidence she occupied a parental role for Sophia and that the benefit to Sophia of preserving that relationship outweighed the benefit Sophia would gain from a permanent home through adoption. Mother has not made that showing.³

Nor has mother made a good cause showing that her trial attorney had a conflict of interest or was ineffective. Mother claims the conflict of interest arises from her attorney's representation of her in a prior dependency case. She believes he is in league with the department in preventing children from reunifying with their families. She claims to have raised this concern during a telephone meeting on February 9, 2018. On August 13, 2018, she claims she filed a complaint against her attorney, asking to have her attorney relieved because he did not communicate with her or help her with her case. She stated in her complaint he pressured her to sign forms she didn't understand and became frustrated and angry when she asked him about the forms or reunification. She claims to have proof of these events and can provide such evidence to this court upon its request.

As a preliminary matter and, as a general rule, we can only consider the evidence that was before the juvenile court when it rendered its decision. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Further, because mother has failed to establish a good cause showing on the record that her attorney was ineffective or had a conflict of interest, we need not deviate from the general rule and consider the evidence mother offers.

We further note the record contains no evidence mother asked the juvenile court to relieve her attorney by filing a *Marsden*⁴ motion or complained that he had a conflict of interest. Finally, in order to make an arguable case of ineffective assistance of

³ Mother nevertheless strives to occupy such a role in her daughter's life. She states in her letter the maternal aunt allows her weekly visits with Sophia, each visit lasting from seven to eight hours beginning in the late afternoon. Mother hopes to develop a stronger parent-child bond and participate in raising Sophia through visitation.

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

counsel, mother has to show her attorney “failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law” and the “claimed error was prejudicial.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667–1668.) Here, mother does not point to any evidence in the record to show her trial attorney’s representation was substandard or that, even assuming he acted in the way she describes, the juvenile court would have ruled differently.

We conclude the contentions raised in mother’s letter do not establish good cause there are arguable issues requiring supplemental briefing. Further, though we are not required to do so, we have reviewed the pertinent parts of the record and we have found no arguable issues for briefing. (*Phoenix H.*, *supra*, 47 Cal.4th at pp. 841–842.) Accordingly, we dismiss the appeal.

DISPOSITION

This appeal is dismissed.